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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 NEMAN BROTHERS & ASSOCIATES,
11 INC., a California Corporation,

12 Plaintiff,

13 v.

14 WHITE MARK UNIVERSAL INC. d/b/a
15 "White Mark," a California corporation;
16 BELK INC. d/b/a "Belk," a Delaware
17 corporation; BELK ECOMMERCE LLC
18 d/b/a "Belk," a North Carolina limited
19 liability company; BLUESTEM
20 BRANDS, INC. d/b/a "Fingerhut," a
21 Delaware corporation; BORDERX LAB
22 INC. d/b/a "BeyondStyle," a Delaware
23 corporation; BOSCOV'S DEPARTMENT
24 STORE, LLC d/b/a "Boscov's," a
25 Pennsylvania limited liability company;
26 CATALYST BRANDS LLC d/b/a
27 "JCPenney," a Delaware limited liability
company; IV MEDIA, LLC d/b/a
"ShopHQ," a Michigan limited liability
company; KOHL'S, INC. d/b/a "Kohl's,"
a Delaware corporation; LYST INC d/b/a
"Lyst," a United Kingdom corporation;

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT
INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY
COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 MACY’S INC. d/b/a “Macy’s,” a
2 Delaware corporation; MODESENS, INC.
3 d/b/a “ModeSens,” a Texas corporation;
4 TARGET CORPORATION d/b/a
5 “Target,” a Minnesota corporation;
6 TRANSFORM SR HOLDING
7 MANAGEMENT LLC d/b/a “Sears,” an
8 Illinois limited liability company;
9 TUESDAY MORNING USA, LLC d/b/a
10 “Tuesday Morning,” a New Jersey limited
11 liability company; and DOES 1 through
12 10,
13 Defendants.

14 Plaintiff NEMAN BROTHERS & ASSOCIATES, INC., by and through its
15 undersigned attorneys, hereby prays to this honorable Court for relief based on the
16 following:

17 **JURISDICTION AND VENUE**

- 18 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§ 101
19 *et seq.*
- 20 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and
21 1338 (a) and (b).
- 22 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
23 1400(a) in that this is the judicial district in which a substantial part of the acts and
24 omissions giving rise to the claims occurred.

25 **PARTIES**

- 26 4. Plaintiff NEMAN BROS. & ASSOCIATES, INC., (“NEMAN”) is a
27 corporation organized and existing under the laws of the State of California with its
28 principal place of business in Los Angeles, CA.

1 5. Plaintiff is informed and believes and thereon alleges that Defendant
2 WHITE MARK UNIVERSAL INC., doing business as “White Mark” (“WHITE
3 MARK”), is a California corporation, with its principal place of business located at
4 1220 Maple Avenue #911, Los Angeles, California 90015, who does business in and
5 with the state of California.

6 6. Plaintiff is informed and believes and thereon alleges that Defendant
7 BELK, INC. is a Delaware corporation, with its principal place of business located at
8 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615, who does business
9 in and with the state of California.

10 7. Plaintiff is informed and believes and thereon alleges that Defendant BELK
11 ECOMMERCE LLC (together with BELK, INC., “BELK”) is an North Carolina
12 limited liability company, with its principal place of business located at 160 Mine
13 Lake Court, Suite 200, Raleigh, North Carolina 27615, who does business in and
14 with the state of California. BELK owns, operates, and/or controls the commercial
15 website <https://www.belk.com/> and its related/affiliated websites, subdomains, and
16 mobile applications, which allow consumers to purchase garments online.

17 8. Plaintiff is informed and believes and thereon alleges that Defendant
18 BLUESTEM BRANDS, INC., doing business as “Fingerhut” (“FINGERHUT”), is a
19 Delaware corporation, with its principal place of business located at 13300 Pioneer
20 Trail, Eden Prairie, Minnesota 55347, who does business in and with the state of
21 California.

22 9. Plaintiff is informed and believes and thereon alleges that Defendant
23 BORDERX LAB INC., doing business as “BeyondStyle” (“BEYOND”), is a
24 Delaware corporation, with its principal place of business located at 111 West
25 Evelyn Avenue, Suite 117, Sunnyvale, California 94086, who does business in and
26 with the state of California.

1 10.Plaintiff is informed and believes and thereon alleges that Defendant
2 BOSCOV’S DEPARTMENT STORE, LLC, doing business as “Boscov’s”
3 (“BOSCOV’S”), is a Pennsylvania limited liability company, with its principal place
4 of business located at 4500 Perkiomen Avenue, Reading, Pennsylvania 19606, who
5 does business in and with the state of California.

6 11.Plaintiff is informed and believes and thereon alleges that Defendant
7 CATALYST BRANDS LLC, doing business as “JCPenney” (“JCPENNEY”), is a
8 Delaware limited liability company, with its principal place of business located at 11
9 Pennsylvania Plaza, New York, New York 10001, who does business in and with the
10 state of California.

11 12.Plaintiff is informed and believes and thereon alleges that Defendant IV
12 MEDIA, LLC, doing business as “ShopHQ” (“SHOPHQ”), is a Michigan limited
13 liability company, with its principal place of business located at 38955 Hills Tech
14 Drive, Farmington Hills, Michigan 48331, who does business in and with the state of
15 California.

16 13.Plaintiff is informed and believes and thereon alleges that Defendant
17 KOHL’S, INC., doing business as “Kohl’s” (“KOHL’S”), is a Delaware corporation,
18 with its principal place of business located at N56 W17000 Ridgewood Drive,
19 Menomonee Falls, Wisconsin 53051, who does business in and with the state of
20 California.

21 14.Plaintiff is informed and believes and thereon alleges that Defendant LYST
22 INC., doing business as “Lyst” (“LYST”), is a United Kingdom corporation, with its
23 principal place of business located at The Minister building, 7th Floor, 21 Mincing
24 Land, London, EC3R 7AG, United Kingdom, who does business in and with the
25 state of California.

26 15. Plaintiff is informed and believes and thereon alleges that Defendant
27 MACY’S, INC., doing business as “Macy’s” (“MACY’S”), is a Delaware
28

1 corporation, with its principal place of business located at 151 West 34th Street New
2 York, New York 10001, who does business in and with the state of California.

3 16.Plaintiff is informed and believes and thereon alleges that Defendant
4 MODESENS, INC., doing business as “ModeSens” (“MODESENS”), is a Texas
5 corporation, with its principal place of business located at 5900 Balcones Drive,
6 Austin, Texas 78731, who does business in and with the state of California.

7 17.Plaintiff is informed and believes and thereon alleges that Defendant
8 TARGET CORPORATION, doing business as “Target” (“TARGET”), is a
9 Minnesota corporation, with its principal place of business located at 1010 Dale
10 Street N., St Paul, Minnesota 55117, who does business in and with the state of
11 California.

12 18.Plaintiff is informed and believes and thereon alleges that Defendant
13 TRANSFORM SR HOLDING MANAGEMENT LLC, doing business as “Sears”
14 (“SEARS”), is an Illinois limited liability company, with its principal place of
15 business located at 5407 Trillium Boulevard, Suite B120, Hoffman Estates, Illinois
16 60192, who does business in and with the state of California.

17 19.Plaintiff is informed and believes and thereon alleges that Defendant
18 TUESDAY MORNING USA LLC, doing business as “Tuesday Morning”
19 (“TUESDAY”) (collectively with BELK, FINGERHUT, BEYOND, BOSCOV’S,
20 JCPENNEY, SHOPHQ, KOHL’S, LYST, MACY’S, MODESENS, TARGET, and
21 SEARS, the “Retailer Defendants”) is a New Jersey limited liability company, with
22 its principal place of business located at 6250 Lyndon B. Johnson Freeway, Dallas,
23 Texas 75240, who does business in and with the state of California.

24 20.Plaintiff is informed and believes and thereon alleges that Defendants
25 DOES 1 through 10, inclusive (collectively with the Retailer Defendants and
26 WHITE MARK, “Defendants”), are other parties not yet identified who have
27 infringed Plaintiff’s copyrights, have contributed to the infringement of Plaintiff’s
28

1 copyrights, or have engaged in one or more of the wrongful practices alleged herein.
2 The true names, whether corporate, individual or otherwise, of Defendants 1 through
3 10, inclusive, are presently unknown to Plaintiff, which therefore sues said
4 Defendants by such fictitious names, and will seek leave to amend this Complaint to
5 show their true names and capacities when same have been ascertained.

6 21. Plaintiff is informed and believes and thereon alleges that at all times
7 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
8 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
9 at all times acting within the scope of such agency, affiliation, alter-ego relationship
10 and/or employment; and actively participated in or subsequently ratified and
11 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
12 all the facts and circumstances, including, but not limited to, full knowledge of each
13 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
14 caused thereby.

15 **CLAIMS RELATED TO DESIGN NB180634**

16 22. Prior to the conduct complained of herein, Plaintiff composed an original
17 two-dimensional artwork for purposes of textile printing. It allocated this design the
18 name NB180634 (hereinafter "Subject Design") and registered it with the United
19 States Copyright Office under Registration No. VAu 1-341-995.

20 23. Plaintiff did not know or have reason to know of any of Defendants'
21 infringing conduct prior to three years before the filing of this Complaint.

22 24. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
23 bearing Subject Design to numerous parties in the fashion and apparel industries.

24 25. Following this distribution of product bearing Subject Design, Plaintiff's
25 investigation revealed that certain entities within the fashion and apparel industries
26 had misappropriated Subject Design and were selling fabric and garments bearing
27 illegal reproductions and/or derivations of Subject Design.

26. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization, WHITE MARK, and certain Doe defendants created, sold, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments comprised of designs which are identical to or substantially similar to the Subject Design ("Infringing Garments"). Such garments include but are not limited to garments sold on <https://www.whitemarkfashion.com> bearing the label "White Mark," and SKUs 9331-02, 9331-03, and 9331-04, indicating they were manufactured or otherwise distributed by WHITE MARK.

27. Plaintiff is informed and believes and thereon alleges that, after creating, selling, manufacturing, causing to be manufactured, and/or importing the Infringing Garments, WHITE MARK distributed them to the Retailer Defendants, who in turn sold them to the public without permission, license, consent or authorization from Plaintiff. Screenshots of online listings offering the Infringing Garments for sale by all Defendants are attached hereto as **Exhibit A**.

28. A comparison of Subject Design (left) and non-exclusive exemplars of the Infringing Garments (right) is set forth below; it is apparent that the elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar:

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| Subject Design | Infringing Garments Exemplar |
|---|---|
|  |  |
| <p data-bbox="532 1056 630 1098">Detail</p>   | <p data-bbox="1166 1056 1263 1098">Detail</p>   |

| Subject Design | Infringing Garments Exemplar |
|---|---|
|  |  |
| <p data-bbox="532 1045 630 1077">Detail</p>   | <p data-bbox="1166 1045 1263 1077">Detail</p>   |

| Subject Design | Infringing Garments Exemplar |
|---|---|
|  |  |
| <p data-bbox="532 1056 630 1094">Detail</p>   | <p data-bbox="1166 1052 1263 1089">Detail</p>   |

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against All Defendants, and Each)

29. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

30. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to Subject Design, including, without limitation, through (a) access to Plaintiff's showroom and/or design library; (b) access to illegally distributed copies of the Subject Design by third-party vendors and/or Doe Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments manufactured and sold to the public bearing fabric lawfully printed with the Subject Design by Plaintiff for its customers.

31. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with Defendant Retailers, and each of them, and supplied garments to said retailers, which garments infringed the Subject Designs in that said garments were composed of fabric which featured unauthorized print design(s) that were identical or substantially similar to the Subject Design, or were an illegal derivation or modification thereof.

32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by creating, making, and/or developing directly infringing and/or derivative works from the Subject Design and by producing, distributing and/or selling garments which infringe the Subject Design through a nationwide network of retail stores, catalogues, and through on-line websites.

1 33. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
2 damages to its business in an amount to be established at trial.

3 34. Due to Defendants' acts of infringement, Plaintiff has suffered general and
4 special damages in an amount to be established at trial.

5 35. Due to Defendants' acts of copyright infringement as alleged herein,
6 Defendants, and each of them, have obtained direct and indirect profits they would
7 not otherwise have realized but for their infringement of the Subject Design. As
8 such, Plaintiff is entitled to disgorgement of Defendant's profits directly and
9 indirectly attributable to Defendant's infringement of Plaintiff's rights in the Subject
10 Design in an amount to be established at trial.

11 36. Plaintiff is informed and believes and thereon alleges that Defendants, and
12 each of them, have committed acts of copyright infringement, as alleged above,
13 which were willful, intentional and malicious, which further subjects Defendants,
14 and each of them, to liability for statutory damages under Section 504(c)(2) of the
15 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
16 per infringement. Within the time permitted by law, Plaintiff will make its election
17 between actual damages and statutory damages.

18 **SECOND CLAIM FOR RELIEF**

19 (For Vicarious and/or Contributory Copyright Infringement - Against All
20 Defendants)

21 37. Plaintiff repeats, realleges, and incorporates herein by reference as though
22 fully set forth, the allegations contained in the preceding paragraphs of this
23 Complaint.

24 38. Plaintiff is informed and believes and thereon alleges that Defendants
25 knowingly induced, participated in, aided and abetted in and profited from the illegal
26 reproduction and/or subsequent sales of garments featuring the Subject Design as
27 alleged herein.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment as follows:

3 **Against All Defendants**

4 **With Respect to Each Claim for Relief**

- 5 a. That Defendants, their agents and employees be enjoined from
6 infringing Plaintiff's copyrights in any manner, specifically those for the
7 Subject Design;
- 8 b. That Plaintiff be awarded all profits of Defendants plus all losses of
9 Plaintiff, plus any other monetary advantage gained by the Defendants
10 through their infringement, the exact sum to be proven at the time of
11 trial, or, if elected before final judgment, statutory damages as available
12 under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- 13 c. That Plaintiff be awarded its attorneys' fees as available under the
14 Copyright Act U.S.C. §§ 101, *et seq.*;
- 15 d. That Defendants, and each of them, account to Plaintiff for their profits
16 and any damages sustained by Plaintiff arising from the foregoing acts
17 of infringement;
- 18 e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 19 f. That Plaintiff be awarded the costs of this action; and
- 20 g. That Plaintiff be awarded such further legal and equitable relief as the
21 Court deems proper.
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1 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
2 38 and 7th Amendment to the United States Constitution.

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4 Respectfully submitted,

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6 Dated: April 4, 2025

By:

/s/ Trevor W. Barrett

Trevor W. Barrett, Esq.

Andres Navarro, Esq.

DONIGER / BURROUGHS

Attorneys for Plaintiff